

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JIMMIE L. ELLIS,

Plaintiff,

v.

Case No. 10-cv-709

**SGT. PISCHKE, CAPTAIN RADTKE,
and CAPTAIN LIPINSKI,**

Defendants.

DECISION AND ORDER

On December 9, 2010, I dismissed plaintiff's complaint for failure to state a claim. See 28 U.S.C. § 1915A. Plaintiff has filed a motion to amend the complaint, a proposed amended complaint, and a motion for appointment of counsel.

In the original complaint, plaintiff alleged that his placement in temporary lock-up (TLU) from July 7, 2010 to July 25, 2010, based a charge for which he was later found not guilty at a disciplinary hearing, violated his rights under the Fourteenth Amendment, the Fourth Amendment, and the Eighth Amendment. However, as set forth in the Screening Order, plaintiff's allegations do not implicate the Due Process Clause of the Fourteenth Amendment and the conditions in TLU do not state a claim under the Eighth Amendment. (Court's Order of December 9, 2010, at 5-6.) The Screening Order does not address plaintiff's Fourth Amendment claim.

The proposed amended complaint alleges: "From July 7, 2010 until July 25, 2010 at Columbia Correctional Institution, the seizure of plaintiff by the defendants violated the plaintiff's rights under the Fourth Amendment to the U.S. Constitution." (Am. Compl. ¶ IV. A.) He claims that for eighteen days he "was unreasonably seized by the defendants for

the charge of 'Threats' in that the plaintiff was found not guilty of said charge on July 25, 2010." (Am. Compl. ¶ IV. B.)

Official action constitutes a seizure under the Fourth Amendment when it deprives a person of some meaningful measure of liberty to which he is entitled. Leslie v. Doyle, 125 F.3d 1132, 1135 (7th Cir. 1997) (citing Ford v. Wilson, 90 F.3d 245, 248 (7th Cir. 1996)). The Fourth Amendment applies only if the confinement in TLU affected such a liberty interest. Id. Under these circumstances, the liberty interest under the Fourth Amendment is the same as that under the Fourteenth Amendment. Id. Having already determined that plaintiff's eighteen day TLU detention does not implicate a Fourteenth Amendment due process liberty interest, his allegations likewise do not state a claim under the Fourth Amendment.

IT IS THEREFORE ORDERED that plaintiff's motion to amend the complaint (Docket #20) is **DENIED**.

IT IS FURTHER ORDERED that plaintiff's motion to appoint counsel (Docket #21) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 7th day of February, 2011.

/s _____
LYNN ADELMAN
District Judge